

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 05 CR 727-5
v.	)	
	)	Judge Amy J. St. Eve
THE RAVELSTON	)	
CORPORATION LIMITED	)	

**PLEA AGREEMENT**

This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and defendant, THE RAVELSTON CORPORATION LIMITED (“RAVELSTON”), through RSM Richter Inc., which is the receiver and manager, interim receiver and CCA monitor (collectively, the “Receiver”) of RAVELSTON, and the attorney for the Receiver, DEBORAH L. STEINER, of Latham & Watkins LLP, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure, and is governed in part by Rule 11(c)(1)(C), as more fully set forth in Paragraph 18 below.

This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant, acting through its authorized representatives, regarding defendant’s criminal liability in case 05 CR 727-5.

This Plea Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies. Moreover, this Agreement is limited to the United States Attorney’s Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities except as expressly set forth in this

Agreement.

The Receiver has been authorized by final order (the “Ontario Order”) of the Ontario Superior Court of Justice (Commercial List) (the “Ontario Court”) dated February 7, 2007, to enter into this agreement and to proceed in accordance with the terms hereof. The Receiver and its attorney, DEBORAH L. STEINER, shall enter the plea agreement for Defendant, in accordance with Fed. R. Crim. P. 43(b). A copy of the Ontario Order shall be made part of the record of this case at the time of the entry of the plea of guilty.

By this Plea Agreement, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, and defendant, RAVELSTON, by its Receiver, and the attorney for the Receiver, DEBORAH L. STEINER have agreed upon the following:

1. Defendant, by its Receiver, acknowledges that it has been charged in Counts One through Nine of the Third Superseding Indictment in this case with mail and wire fraud, in violation of Title 18, United States Code, Sections 1341, 1343 and 1346.
2. Defendant, by its Receiver, has read the charges against it contained in the Third Superseding Indictment and those charges have been fully explained to it by its attorney.
3. Defendant, by its Receiver, fully understands the nature and elements of the crimes with which it has been charged.
4. Defendant, by its Receiver, will enter a voluntary plea of guilty to Count Two of the Third Superseding Indictment in this case.
5. Defendant, by its Receiver, will plead guilty because it is in fact guilty of the charge contained in Count Two of the Third Superseding Indictment. In pleading guilty, Defendant, by its

Receiver, admits the following facts and that those facts establish its guilt beyond a reasonable doubt:

### **Background**

During a time period including 1998 through 2001, defendant was an Ontario corporation with its principal office located in Toronto, Canada. Defendant was a privately held corporation with most of its equity owned, directly or indirectly, by officers or directors of Hollinger International, Inc. (“International”) (now Sun-Times Media Group Inc.) and Hollinger Inc. (“Inc.”). Defendant’s principal asset was its controlling interest in Inc., which it held directly and through various subsidiaries, and which was approximately 78% of Inc.’s equity during the relevant time period. Inc. was a Canadian corporation that owned interests in various corporations that operated newspapers and other publications around the world. Since International went public in 1994, Inc. has held at least a majority of International’s voting rights, while usually owning less than 50% of International’s equity.

From 1999 through 2003, Inc. owned less than a majority of International’s equity, but was nevertheless International’s controlling shareholder. This was so because Inc. owned all of International’s Class B common shares – either directly or indirectly through one of Inc.’s subsidiaries – and each Class B share had the right to cast 10 votes in any matter submitted for a shareholder vote, compared to one vote per share for the Class A common shares held by International’s public investors. Although sales and financings involving Inc. reduced Inc.’s ownership of International’s equity to approximately 19.7%, Inc. still possessed approximately 70.1% of International’s voting power. Inc. was a publicly traded company on the Toronto Stock Exchange.

Defendant was the controlling shareholder of International through its controlling interest in Inc.

### **Interests of Co-Defendants**

In 2003, co-defendant CONRAD M. BLACK (“BLACK”), through Conrad Black Capital Corporation, owned approximately 65.1% of defendant. BLACK was Chief Executive Officer and Chairman of the Board of Directors of defendant. Co-defendant JOHN A. “Jack” BOULTBEE (“BOULTBEE”), who was a Chartered Accountant in Canada, was a Canadian citizen who resided in the Toronto area. BOULTBEE, through Mowitz Holdings, Inc., owned approximately .98% of defendant. BOULTBEE was Chief Financial Officer of defendant. Co-defendant PETER Y. ATKINSON (“ATKINSON”), who was a licensed attorney in Canada, owned .98% of defendant. David Radler (“RADLER”) was the President and a director of defendant, and had a 14.1% ownership interest in defendant.

### **Management Services Agreement with International**

BLACK, RADLER, BOULTBEE and ATKINSON were employees of defendant. Some of the services provided by these executives to International, along with certain accounting, financial reporting and other administrative functions, were paid for by defendant pursuant to a management services agreement dated January 1, 1998 (the “Management Agreement”). Pursuant to the Management Agreement, defendant represented and promised that it would discharge its duties thereunder honestly, in good faith, and in the best interests of International. The Management Agreement further provided that defendant would provide the details of any conflict of interest involving defendant’s performance of its management services to the Secretary of International, who would then present all material facts concerning all related-party transactions to International’s

Audit Committee for its review and approval. Unless authorized by International's Board of Directors, or a committee thereof, BLACK, RADLER, BOULTBEE and ATKINSON's compensation for their work for International, including bonuses, was to be received directly by or through defendant.

As a manager of International, Defendant had a fiduciary duty to International, among other things, to provide honest services to International, to refrain from violating any fiduciary duties owed to International, and to disclose all material facts to International's independent directors regarding any transactions involving International and any of International's officers, directors and controlling shareholders.

### **Forum Transaction**

Defendant, as manager of International, through its authorized agents, was involved in the negotiation of business terms of sales of community newspapers in the United States to Forum Communications Inc. ("Forum").

On or about September 30, 2000, International entered into an Asset Purchase Agreement to sell certain newspapers to Forum for \$14 million, \$400,000 of which was allocated to non-competition agreements.

It is not unusual for transactions in the newspaper business to include a non-competition agreement signed by the seller whereby it promises not to acquire or establish a newspaper within a certain geographic distance from the newspapers it sold for a certain period of time after the sale. The buyer typically does not pay additional consideration for a separate agreement prohibiting the seller and its affiliates from competing with the buyer. Rather, a portion of the purchase price is negotiated as allocated to any non-competition agreements.

In the Forum transaction International and Inc. were inserted as non-compete covenanter and the amount payable by the buyer for the non-compete agreements was allocated 75% to International and 25% to Inc. To the best of defendant's knowledge, Forum had not requested that Inc. be included as a non-compete covenanter. At the closing, on or about October 2, 2000, approximately \$100,000 was wire transferred to Inc. as a result of the non-compete agreement.

Ravelston, through its agents, breached its fiduciary duty to International to refrain from acting to benefit itself or anyone else at International's expense, and participated in a scheme to defraud International of money to which it was entitled under the Forum transaction, by causing money to be diverted from International to Inc. by arranging for Inc. to be included as a non-competition covenantor and to receive 25% of the funds allocated to the non-competition covenant.

Defendant benefited by this transaction because it owned a greater percentage of the equity of Inc. than it did of International. The \$100,000 payment to Inc., at International's expense, was a related party transaction.

With respect to Count Two of the Third Superseding Indictment, on or about August 19, 2000, at Chicago, in the North District of Illinois, Eastern Division, defendant, through its agents, for the purpose of executing and attempting to execute the scheme to defraud described above, knowingly caused to be deposited for delivery by an interstate carrier from Chicago, Illinois, an envelope addressed to the attorney for Forum Communications Inc. in Fargo, North Dakota, to be sent and delivered by an interstate carrier, namely: Federal Express, according to the directions thereon, which envelope contained transaction documents relating to International's September 30, 2000 sale of certain newspapers to Forum, including a Non-

Competition Agreement, wire transfer instructions for the Non-Competition Agreement and an Asset Purchase Agreement, in violation of Title 18, United States Code, Sections 1341, 1346 and 2.

The factual summary contained in this paragraph is provided for the sole purpose of establishing a factual basis for defendant's plea of guilty. It does not contain all information known to defendant regarding the offense of conviction and other criminal conduct.

6. For purposes of calculating the guidelines promulgated by the United States Sentencing Commission pursuant to Title 28, United States Code, Section 994, the parties agree on the following points:

(a) The guideline calculation is governed by the November 1, 2006 edition of the Guidelines Manual.

(b) The base offense level for the offense of conviction is five pursuant to Guideline § 8C2.5(a).

(c) The base offense level is increased one level to a level six since more than ten employees and an individual with substantial authority personally participated in, condoned, or was willfully ignorant of the offense pursuant to Guideline § 8C2.5(b)(5).

(d) Pursuant to Guideline § 8C2.5(g)(2), RAVELSTON, by its Receiver, has fully cooperated in the investigation and clearly demonstrated recognition and affirmative acceptance of responsibility for its conduct and a two-level reduction in the offense level is appropriate for a total resulting level of four.

(e) Pursuant to Guideline § 8C2.6, defendant's minimum and maximum multiplier is between 0.80 and 1.60.

(f) The parties agree that the total pecuniary loss involved in the transactions underlying the offenses charged in the Third Superseding Indictment is \$83,950,000 for which the applicable Guidelines fine range is \$67,160,000 - \$134,320,000. Defendant by its Receiver neither admits nor denies responsibility for the entirety of any such loss and will not contest the government's evidence proving such a loss figure beyond a reasonable doubt at a trial or at the sentencing. Defendant, by its Receiver, reserves the right to submit to the Court evidence regarding loss allocation among defendants at sentencing.

(g) Defendant, by its Receiver, and the government acknowledge that the above calculations are preliminary in nature and based on facts known to the government as of the time of this Agreement. Defendant, by its Receiver, understands that the Probation Department will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations.

7. Errors in calculations or interpretation of any of the guidelines may be corrected by either party prior to sentencing. The parties may correct these errors or misinterpretations either by stipulation or by a statement to the probation office and/or Court setting forth the disagreement as to the correct guidelines and their application. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw the plea on the basis of such corrections.

8. Defendant, by its Receiver, understands that, in imposing sentence, the Court will be guided by the United States Sentencing Guidelines. Defendant, by its Receiver, understands that the Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines



in determining a reasonable sentence.

9. Defendant, by its Receiver, understands that the offense to which it will plead guilty carries a maximum fine of \$500,000, or twice the gain or loss, whichever is greater; a term of probation of five years; and any restitution ordered by the Court.

10. Defendant, by its Receiver, understands that in accord with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, defendant will be assessed \$400 on each count of conviction, in addition to any other penalty imposed. Defendant, by its Receiver, agrees to pay the special assessment of \$400 at the time of sentencing with a cashier's check or a money order made payable to the Clerk of the U. S. District Court.

11. Defendant, by its Receiver, understands that by pleading guilty it surrenders certain rights, including the following:

(a) If defendant persisted in a plea of not guilty to the charge against it, it would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. Defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

(b) If the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. Defendant and its attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously, considering each count of the indictment separately, before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed

innocent, and that it could not convict defendant unless, after hearing all the evidence, and considering each count separately, it was persuaded of defendant's guilt beyond a reasonable doubt.

(c) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count of the indictment separately, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

(d) At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and its attorney would be able to cross-examine them. In turn, defendant could present witnesses and other evidence in its own behalf. If the witnesses for defendant would not appear voluntarily, it could require their attendance through the subpoena power of the court.

12. Defendant, by its Receiver, understands for purposes of applying the alternative fine based on gain or loss set forth in Title 18, United States Code, Section 3571(d), it is entitled to have any pecuniary loss or gain from the offense of conviction which could increase the applicable fine above \$500,000 determined at a jury trial under a proof beyond a reasonable doubt standard. Defendant, by its Receiver, further understands that by pleading guilty, it agrees to waive having the pecuniary loss or gain from the offense of conviction found by the jury beyond a reasonable doubt. The parties agree that the applicable alternative fine pursuant to Section 3571(d), will be calculated as if the total pecuniary loss involved in the offense of conviction were in excess of \$3,500,000. As stated above, defendant by its Receiver neither

admits nor denies responsibility for the entirety of any such loss and reserves the right to submit to the Court evidence regarding loss allocation among defendants at sentencing.

13. Defendant, by its Receiver, understands that by pleading guilty it is waiving all the rights set forth in the prior paragraphs. Defendant's attorney has explained those rights to defendant, and the consequences of his waiver of those rights. Defendant, by its Receiver, further understands it is waiving all appellate issues that might have been available if it had exercised his right to trial.

14. Defendant, by its Receiver, is also aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal any sentence within the maximum provided in the United States Code, or the manner in which that sentence was determined, in exchange for the concessions made by the United States in this Plea Agreement. Defendant, by its Receiver, also waives its right to challenge the sentence or the manner in which it was determined in any collateral attack, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation.

15. Defendant, by its Receiver, agrees that defendant will continue to fully cooperate with the government in any matter in which it is called upon to cooperate which is consistent with the Receiver's role, and subject to the Receiver obtaining any further approval(s) and order(s) from the Ontario Court, should the Receiver determine that such approval(s) and order(s) are required.

(a) Defendant, by its Receiver, and subject to further approval(s) order(s) of

the Ontario Court, will continue to fully cooperate with the government and representatives of the SEC, including to disclose all information with respect to the activities of defendant, its officers and employees concerning all matters about which the government (including representatives of the SEC) shall inquire. This obligation of disclosure includes an obligation upon defendant to provide to the government and representatives of the SEC, on request, any document, record or other tangible evidence about which the government or representatives of the SEC shall inquire of defendant and provide to the government and representatives of the SEC access to defendant's facilities, documents and employees, subject to the Receiver obtaining any further approval(s) and order(s) from the Ontario Court should the Receiver determine that such approval(s) and order(s) are required.

(b) Defendant, by its Receiver, agrees to postpone its sentencing until after the conclusion of the prosecution of co-defendants in this or any related criminal proceeding.

16. Defendant, by its Receiver, understands that the United States Attorney's Office will fully apprise the District Court and the United States Probation Office of the nature, scope and extent of defendant's conduct regarding the charges against it, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing.

17. Defendant, by its Receiver, understands that Title 18, United States Code, Section 3664 and Sections 5E1.1 and 5E1.2 of the Sentencing Guidelines set forth the factors to be weighed in setting a fine in this case. Defendant, by its Receiver, agrees to provide full and truthful information to the Court and Probation Office regarding all details of its economic circumstances. Defendant, by its Receiver, understands that providing false or incomplete information may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as

contempt of the Court.

18. At the time of sentencing, the government shall make known to the sentencing judge the extent of defendant's cooperation, and, assuming defendant's full and truthful cooperation, shall move the Court, pursuant to Sentencing Guideline § 5K1.1 and 18 U.S.C. § 3553(e), to depart from the applicable advisory sentencing guideline range and to impose the sentence agreed to by the parties as outlined below. Defendant, by its Receiver, understands that the decision to depart from the applicable advisory guideline range rests solely with the Court. However, this Plea Agreement is governed, in part, by Federal Rule of Criminal Procedure 11(c)(1)(C). That is, the parties have agreed that the sentence imposed by the Court shall include a fine in the amount of \$7,000,000. Other than this agreed fine amount, the parties have agreed that the Court remains free to impose the sentence it deems appropriate. If the Court accepts and imposes the agreed fine set forth herein, defendant may not withdraw this plea as a matter of right under Federal Rule of Criminal Procedure 11(c)(3), (4) and (5). If, however, the Court refuses to impose the agreed fine set forth herein, thereby rejecting the Plea Agreement, or otherwise refuses to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound thereto.

19. Defendant, by its Receiver, understands that the Third Superseding Indictment and this Plea Agreement are matters of public record and may be disclosed to any party.

20. Regarding the fine and restitution, the parties to this Plea Agreement agree to the following:

a. Pursuant to Title 18 U.S.C. §§ 3663A and 3663(c), the parties agree to the entry of an order by the Court at the time of sentencing for restitution owed to the victim for the

pecuniary loss attributable to the offense of conviction and the transactions underlying the offenses charged in the Third Superseding Indictment which are attributable to the defendant, minus any credit for funds repaid prior to sentencing. More than one defendant other than the defendant have also contributed to the pecuniary loss suffered by the victim and, pursuant to Title 18 U.S.C. § 3664(h), a proper apportionment of liability is required in order to fairly and accurately reflect, among other things, defendant's contribution to the victim's loss and defendant's economic circumstances.

b. The loss to International attributable to the offense of conviction was \$100,000.

c. The total pecuniary amount in all the transactions underlying the applicable offenses charged in the Third Superseding Indictment was \$83,950,000 and more than one defendant was involved in those transactions. Based on information currently available to the parties, individuals or entities (including defendants) other than defendant have made restitution to International of approximately \$32.8 million.

d. With respect to the restitution amount attributable to defendant, each party reserves the right to make whatever recommendation it deems appropriate to the Probation Office and the Court at the time of sentencing.

e. The fine and any restitution order shall, in due course, be dealt with in the Canadian Insolvency Proceedings in the context of the following:

(i) The Ontario Court, under the Canadian Insolvency Proceedings, has established a procedure (the "Canadian Claims Procedure") under which claims asserted against defendant are to be assessed and quantified in order for the claimants to be entitled to receive an appropriate distribution from the assets of defendant or the proceeds thereof;

(ii) The government may amend the claim which it has already filed with the Receiver in the Canadian Claims Procedure to accurately reflect the fine and any restitution order: it will continue to claim only as an ordinary creditor, and will not claim any priority or secured position with respect to Ravelston's assets located in Canada. Nothing will affect any rights, which the government has, or might have, to enforce payment of the fine or any restitution order on non-Canadian assets, or to offset amounts otherwise owing to Ravelston by the government against the fine or the restitution order. If the government initiates any enforcement actions, any notice it is required to give to the defendant will be given to the Receiver;

(iii) International has instituted proceedings in Chicago, Illinois, Case No. 04C-0698 (the "Illinois Action") for the recovery of amounts of which it considers itself to have been deprived as a result of what it contends to be the wrongdoings of defendant and others relating to International;

(iv) The Receiver and International entered into an agreement dated May 13, 2005, which was approved by order of the Ontario Court dated May 18, 2005, under which it was agreed that any amounts to which International is determined to be entitled under the Illinois Proceedings is to be accepted as a claim for distribution purposes in the Canadian Claims Procedure;

(v) The Ontario Court will be required to determine whether a claim by the government for either or both the fine and any restitution order constitute valid claims in the Canadian Insolvency Proceedings. The Receiver will not have violated this Plea Agreement if it expresses a view or asserts or supports a position that the fine and/or any restitution order do not

give rise to a valid claim in the Canadian Insolvency Proceedings;

(vi) If the government's claim based on any restitution order is recognized by the Ontario Court as a valid claim in the Canadian Insolvency Proceedings, it will be off-set, and will be reduced dollar-for-dollar, by the amount of all claims in the Illinois Action or otherwise, as finally proven through agreement, settlement or judgment, in favor of International for the pecuniary loss attributable to the offense of conviction and the transactions underlying the offenses charged in the Third Superseding Indictment which are attributable to the defendant (the "International-Related Claims"), and of which the Court had not been advised at the time of the making of the restitution order. The government will, at the request of the Receiver, confirm the reduction of its claim as the amounts of the International-Related Claims are determined. The purpose of this clause is to implement 18 U.S.C. § 3664(j) and to ensure that the victim does not receive double recovery of the International-Related Claims, and nothing herein is intended to or shall confer a double reduction of the International-Related Claims.

21. Defendant, by its Receiver, understands that its compliance with each part of this Plea Agreement extends throughout and beyond the period of this sentence, and failure in any material way to abide by any term of the Plea Agreement is a violation of the Agreement. Defendant, by its Receiver, further understands that in the event it violates this Agreement in any material way, the government, at its option, may move on no less than five days notice to the Receiver for an order from the Court to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or to resentence defendant. Defendant, by its Receiver, understands and agrees that in the event that this Plea Agreement is breached by defendant, and the government elects to void the Plea



Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this agreement and the commencement of such prosecutions.

22. Defendant, by its Receiver, and its attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

23. Defendant, by its Receiver, agrees this Plea Agreement shall be filed and become a part of the record in this case.

24. The United States agrees not to seek additional criminal charges in the Northern District of Illinois against defendant for any criminal acts concerning defendant, Hollinger and Hollinger-related entities, currently known to the United States Attorney's Office for the Northern District of Illinois. However, nothing in this Agreement limits the United States in prosecution of defendant in other districts, or in the Northern District of Illinois for crimes not currently known to the United States Attorney's Office for the Northern District of Illinois, except as expressly set forth in this Agreement.

25. After sentence has been imposed on the count to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the Third Superseding Indictment as to this defendant.

26. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound thereto.

27. Defendant, by its Receiver, acknowledges that it has read this Agreement and carefully reviewed each provision with its attorney. Defendant, by its Receiver, further acknowledges that it understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: \_\_\_\_\_

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PATRICK J. FITZGERALD  
United States Attorney

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THE RAVELSTON CORPORATION LIMITED  
Defendant  
By: RSM Richter Inc., in its capacities, as  
court-appointed Receiver and Manager, Interim  
Receiver and Monitor, and not in its personal or  
corporate capacities

\_\_\_\_\_  
ERIC H. SUSSMAN  
Assistant United States Attorney

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DEBORAH L. STEINER  
Attorney for Defendant